



New South Wales

Occupational Health and Safety Amendment (Sentencing Guidelines) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

A guideline judgment is a judgment of a court that sets out guidelines for the sentencing of offenders. Such guidelines are intended to be indicative only and are not intended to be applied in every case as if they were rules binding on judges but help to ensure consistency in sentencing decisions. Recently, legislation was enacted to enable the Attorney General to apply to the Court of Criminal Appeal at any time (rather than in the context of a particular case) to ask it to exercise its power and jurisdiction to give a guideline judgment in respect of a specified offence or category of offences. (This legislation was originally enacted in the *Criminal Procedure Amendment (Sentencing Guidelines) Act 1998*. However, it is now found in Division 4 of Part 3 of the *Crimes (Sentencing Procedure) Act 1999*.)

The object of this Bill is to establish a similar procedure in relation to sentencing for occupational health and safety offences. The Bill proposes to amend the *Occupational Health and Safety Act 1983* to enable the Attorney General to apply to the Full Bench of the Industrial Relations Commission in Court Session at any time to ask it to give a guideline judgment in respect of a specified offence or category of offences relating to occupational health and safety.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendment to the *Occupational Health and Safety Act 1983* set out in Schedule 1.

Schedule 1 contains the amendment described in the above overview.

First print



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New South Wales

Occupational Health and Safety Amendment (Sentencing Guidelines) Bill 2000

No. , 2000

A Bill for

An Act to amend the *Occupational Health and Safety Act 1983* with respect to guidelines for the sentencing of persons convicted of occupational health and safety offences.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Occupational Health and Safety Amendment (Sentencing Guidelines) Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Occupational Health and Safety Act 1983 No 20	8
The <i>Occupational Health and Safety Act 1983</i> is amended as set out in Schedule 1.	9 10

Schedule 1	Amendment	1
	(Section 3)	2
Part 7		3
Insert after Part 6:		4
Part 7	Sentencing guidelines	5
Division 1	Interpretation	6
56	Definitions	7
	In this Part:	8
	<i>Full Bench</i> means the Full Bench of the Industrial Relations Commission in Court Session.	9 10
	<i>guideline judgment</i> means a judgment of the Full Bench containing guidelines to be taken into account by the Industrial Relations Commission in Court Session, a Local Court, the District Court or the Supreme Court in sentencing persons convicted of an offence being:	11 12 13 14 15
	(a) guidelines that apply generally, or	16
	(b) guidelines that apply to particular courts (or the Industrial Relations Commission in Court Session) or classes of courts, to particular offences or classes of offences, to particular penalties or classes of penalties or to particular classes of persons convicted of an offence (but not to particular persons).	17 18 19 20 21 22
	<i>guideline proceedings</i> means proceedings under section 57 on an application for a guideline judgment referred to in that section.	23 24 25
	<i>offence</i> means an offence under this Act, the regulations or the associated occupational health and safety legislation.	26 27
	<i>State peak council</i> has the meaning that it has in the Dictionary to the <i>Industrial Relations Act 1996</i> .	28 29

Division 2	Applications for sentencing guidelines	1
57	Guideline judgments on application of Attorney General	2
(1)	The Full Bench may give a guideline judgment on application of the Attorney General.	3 4
(2)	An application for a guideline judgment may include submissions with respect to the framing of the guidelines.	5 6
(3)	An application is not to be made in any proceedings before the Full Bench with respect to any particular person.	7 8
(4)	The powers and jurisdiction of the Full Bench to give a guideline judgment in proceedings under this section in relation to an offence are the same as the powers and jurisdiction that the Court of Criminal Appeal has to give a guideline judgment in a pending proceeding relating to an offence apart from section 37 of the <i>Crimes (Sentencing Procedure) Act 1999</i> .	9 10 11 12 13 14
(5)	A guideline judgment under this section may be given separately or may be included in any judgment of the Full Bench that it considers appropriate.	15 16 17
58	Peak councils may intervene	18
(1)	A State peak council, or a representative of a State peak council who is a legal practitioner, may appear in guideline proceedings.	19 20 21
(2)	Without limiting subsection (1), a State peak council or its representative may do either or both of the following:	22 23
(a)	make submissions with respect to the framing of the guidelines,	24 25
(b)	assist the Full Bench with respect to any relevant matter.	26
59	Full Bench may give persons or organisations leave to appear	27
(1)	The Full Bench may grant leave to any person, organisation or government department or agency (or a representative of any person, organisation, department or agency who is a legal practitioner) to appear in guideline proceedings.	28 29 30 31

(2) Without limiting subsection (1), any person, organisation, government department or agency that is granted leave to appear (or its representative, if any) may do either or both of the following:	1 2 3 4
(a) make submissions with respect to the framing of the guidelines,	5 6
(b) assist the Full Bench with respect to any relevant matter.	7
(3) This section does not apply to State peak councils.	8
60 Alteration of guideline judgments	9
A guideline judgment given in proceedings under section 57 may be reviewed, varied or revoked in a subsequent guideline judgment of the Full Bench, whether made under that section or apart from it.	10 11 12 13
61 Discretion of Full Bench preserved	14
Nothing in this Part:	15
(a) limits any power or jurisdiction of the Full Bench to give a guideline judgment that the Full Bench has apart from section 57, or	16 17 18
(b) requires the Full Bench to give any guideline judgment under section 57 if it considers it inappropriate to do so.	19 20
62 Rules of Industrial Relations Commission	21
Rules of the Industrial Relations Commission may be made under the <i>Industrial Relations Act 1996</i> with respect to applications, and proceedings to determine applications, under this Part.	22 23 24 25
Division 3 Miscellaneous	26
63 Use of evidence in giving guideline judgments	27
(1) Nothing in section 12 of the <i>Criminal Appeal Act 1912</i> or in section 163 (2) of the <i>Industrial Relations Act 1996</i> limits the evidence or other matters that the Full Bench may take into consideration in giving a guideline judgment (whether or not on	28 29 30 31

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Schedule 1 Amendment

an application under this Part) and the Full Bench may inform
itself as it sees fit. 1
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- (2) The Full Bench must not increase a sentence in any appeal by
reason of, or in consideration of, any evidence that is used by
the Full Bench in giving a guideline judgment in the appeal but
was not given in the original proceedings. 3
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